

**ALAMEDA COUNTY SUPERIOR COURT**  
**APPLICATION FOR APPOINTMENT TO ADR PANELS**  
*including Judicial Arbitration, Mediation, Neutral Evaluation, and Private Arbitration*

**1. APPLICANT:**

**Applicant's Name:** Michael J. Loeb  
**Firm Name:** Bingham McCutchen, LLP  
**Address:** Three Embarcadero Center, 18<sup>th</sup> Floor  
**City/State/Zip:** San Francisco, CA 94111-4067  
**Telephone:** 415.393.2790 **Fax:** 415.393.2286  
**Email:** michael.loeb@bingham.com

**2. PANEL REQUEST:** *(All applicants are requested to serve as Judicial Arbitrators)*

Check each panel for which you are applying:

☒ Judicial Arbitration ☒ Mediation ☒ Neutral Evaluation ☒ Private Arbitration

**3. EDUCATION:**

| <u>Dates (from-to)</u> | <u>College/University/Law School</u> | <u>Degree Obtained</u>   |
|------------------------|--------------------------------------|--------------------------|
| 9/65 – 5/69            | Cornell University                   | B.A.                     |
| 8/71 – 5/74            | Hastings College of the Law          | J.D. (Order of the Coif) |

**4. LEGAL EXPERIENCE:** State Bar No: 61927 Date Admitted: 1974

A. Are you a member in good standing of the State Bar of California? ☒ Yes ☐ No

B. Are you a retired judicial officer? ☐ Yes ☐ No

Please describe when/where you last served as a judicial officer: \_\_\_\_\_

C. Are you actively engaged in the practice of law at this time? ☒ Yes ☐ No

If not, are you retired from practice? \_\_\_\_\_ Date retired: \_\_\_\_\_

If your license is presently inactive, please explain: \_\_\_\_\_

D. Are you currently active in litigation practice? ☒ Yes ☐ No

Approximately what percentage of your practice involves litigation? \_\_\_\_\_%

E. If your practice includes personal injury litigation, approximately what percentage of your practice involves the representation of: plaintiffs \_\_\_\_\_% ; of defendants \_\_\_\_\_%?

F. How many of the following have you personally handled as attorney of record in the past five years? Jury Trials 1 ; Court Trials 0 ; Mediations 30 ; Arbitrations 1 ;

G. Describe any legal publications or teaching you have done: Co-author of Practice & Procedure Chapter in Rutter Group California Practice Guide; Employment Litigation. I have written widely and spoken at over 30 seminars during the past five years on a wide variety of employment topics, including wage and hour developments, leaves of absences, disability discrimination, sexual harassment prevention, California Employment Law

updates, and employment ADR.

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5. ADR TRAINING and EXPERIENCE

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| Course Title                      | Sponsoring Organization                 | Hours of Credit | Dates |
|-----------------------------------|---|-----------------|-------|
| Employment Mediation              | United States District Court (Northern) | 12              | 1995  |
| Arbitration Training              | American Arbitration Assn.              | 8               | 1999  |
| Early Neutral Evaluation Training | United States District Court (Northern) | 8               | 1994  |

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- A. Number of years experience as: mediator 10 ; arbitrator 8 ; neutral evaluator 10
- B. List all other court-connected ADR panels of which you are a member, specifying the Processes for which you have qualified: United States District Court, Northern District of California mediation, ENE, arbitration; Contra Costa Superior Court, mediation, ENE; Alameda County Superior Court, mediation, ENE, arbitration; Santa Clara Superior Court, mediation, ENE.
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- C. State the name(s) of any organization(s) through which you have provided ADR services during the past five years, giving the dates and the services you provided: American Arbitration Association 1996 – 2002; 8 arbitrations
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- D. Describe the subject matter of five disputes in which you served as the ADR provider in the past 5 years, including the dates of service, the process and if you were sole or co-provider.
1. Wrongful termination/defamation/age discrimination – February 2003 – sole mediator
  2. Sexual harassment – April 2003 – sole mediator
  3. Disability discrimination – November 2001 – sole arbitrator
  4. Age discrimination/wrongful termination – October 2002 – sole mediator
  5. Sex discrimination, whistleblower, wrongful termination – July 2002 – sole mediator
- E. Is your ADR style best described as   X   facilitative or   X   evaluative/directive?  
(Flexible – can be either)
- F. Describe any ADR related publications or training you have done:  
Counsel on Education in Management – Employment law ADR.
- G. Set forth your hourly fee or fee schedule, including any sliding scale or pro bono provisions.  
**Attach a copy of your fee agreement.** *(Please note: Judicial arbitrators waive compensation for the first three (3) hours of hearing time in Alameda County and all ADR panelists are requested to accept at least three (3) Judicial arbitration cases per year).*
- One day mediation/ENE including all preparation time and pre-mediation conference - \$4,000. Rates very depending on complexity of case and amount of preparation.
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6. AVAILABILITY/SPECIAL REQUIREMENTS

- A. List any languages, other than English, in which you are able to conduct ADR proceedings:  
None
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- B. Please state any special bi-cultural/multi-cultural capabilities or familiarity you possess:
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- C. You are available to conduct ADR conferences:   X   in your office;   X   at counsel's office;        other (please describe: \_\_\_\_\_)
- D. You are available to conduct ADR proceedings:   X   during regular office hours;   X   evenings by appointment;   X   weekends by prior arrangement;
- E. Please describe any requirements you have for ADR participants such as submission of copies of pleadings, briefs, declarations in lieu of testimony, etc.:

I require submissions of short, fact-intensive ADR pre-hearing briefs unless there are unusual legal issues. I also want to review key documents, i.e. important deposition testimony, discovery responses, policies, evaluations, investigation reports, comparative treatment information.

## 7. SUBJECT MATTER DESIGNATION

Please check each area below in which you are qualified by training/experience to provide ADR services, indicating the percentage it represents of your law practice, if any, and the ADR process(es) which you are prepared to offer in that area:

| Case Type Accepted  | % of Practice   | Judicial Arb. | Mediation | Neutral Eval. | Private Arb. |
|---------------------|-----------------|---------------|-----------|---------------|--------------|
| Bankruptcy          |                 |               |           |               |              |
| Business/Corp.      |                 |               |           |               |              |
| Civil Rights        | Past Experience | X             | X         | X             | X            |
| Collections         |                 |               |           |               |              |
| Construction        |                 |               |           |               |              |
| Contracts           |                 |               |           |               |              |
| Elder law/abuse     |                 |               |           |               |              |
| Employment          | 100%            | X             | X         | X             | X            |
| -Discrimination     | X               | X             | X         | X             | X            |
| -Harassment         | X               | X             | X         | X             | X            |
| -Termination        | X               | X             | X         | X             | X            |
| Environmental       |                 |               |           |               |              |
| Fraud               |                 |               |           |               |              |
| False Imprison.     |                 |               |           |               |              |
| Family Law          |                 |               |           |               |              |
| HO Ass'n            |                 |               |           |               |              |
| Insurance Cov.      |                 |               |           |               |              |
| Intellect. Property |                 |               |           |               |              |
| Landlord-Tenant     |                 |               |           |               |              |
| Legal Malpractice   |                 |               |           |               |              |
| Maritime            |                 |               |           |               |              |
| Med Malpractice     |                 |               |           |               |              |
| Partnership         |                 |               |           |               |              |
| P.I. – Auto         |                 |               |           |               |              |
| P.I. – Other        |                 |               |           |               |              |

**SENT BY FACSIMILE**

Direct: (415) 393-2790  
michael.loeb@bingham.com

[Current Date]

Party No. 1

Party No. 3

Party No. 2

Party No. 4

**Re: Plaintiff, et al. v. Defendant, et al.  
Alameda County Superior Court (\_\_\_\_\_ Division)  
Civil Docket No.: \* \* \* \* \* XXX ADR**

Dear Counsel:

This confirms my appointment as mediator in this case. I have provided my disclosure regarding potential conflicts of interest and receiving no objections from the parties, I will schedule the mediation.

This letter also confirms the terms under which I will serve as the mediator. This mediation is through the ADR Rules of the Superior Court of California, County of Alameda. I will provide you with three free hours, including the first hour of the mediation. Thereafter, I will charge my normal daily rate for conducting mediation of \$4,000 for a one-day mediation. This rate includes my preparation time. My fee for the mediation shall be borne by the parties equally, unless you agree otherwise. Please make your checks payable to Bingham McCutchen, L.L.P., Federal Tax Identification No. 04-2255187.

**Pre-Mediation Telephone Conference**

We will hold a pre-mediation telephone conference on \_\_\_\_\_, 2003 at \_\_\_\_:00 \_\_\_\_m. During this conference, we will discuss the issues, who

should attend the mediation, establish a schedule for submitting mediation briefs, and schedule the mediation.

If you believe there are issues you want to discuss with me before or after the pre-mediation telephone conference, you can call me directly at (415) 393-2790. As this is mediation, there is no preclusion of “ex parte” communications. If I have any questions about your submissions, I will call you directly.

### **Guideline for the Mediation**

We will begin with an opening session. I will request that each lawyer make a statement discussing the key legal and factual issues, focused on the opposing party, discussing, in a down-to-earth manner, why your position is justified. This should not be the kind of partisan argument you would present to a jury. The opening session will also be used to discuss the facts and in particular, what the parties agree upon.

With the permission of counsel, I will direct many of my questions to the parties or witnesses. They usually have the best knowledge of the facts. After the opening session, we will have several separate caucuses to further explore the facts, legal issues and settlement.

### **Preparation of a Settlement Agreement by Defense Counsel**

Our goal is settlement. As mediators must be optimistic, I am requesting that counsel for the defendant prepare and bring a skeletal settlement agreement to the mediation.

### **Conclusion**

I look forward to resolve this case. If you have any questions about logistics or the conduct of the mediation, please do not hesitate to contact me.

Very truly yours,

Michael J. Loeb

cc: Hon. Julia Apain, Chair  
ADR Administration Committee